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IN THE UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
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ELIZABETH HUEBNER,

9 Plaintiff,

10 v.
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12 AMERICAN FAMILY CONNECT
13 PROPERTY AND CASUALTY
14 INSURANCE COMPANY F/K/A IDS
15 PROPERTY CASUALTY
16 INSURANCE COMPANY, a foreign
17 insurer licensed to do business in the State of
18 Washington,
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Defendant.

No. 2:22-cv-00882-RSL

STIPULATED PROTECTIVE ORDER

17 **1. PURPOSES AND LIMITATIONS**

18 Discovery in this action is likely to involve the production of confidential, proprietary,
19 or private information for which special protection may be warranted. Accordingly, the parties
20 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
21 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
22 blanket protection on all disclosures or responses to discovery, the protection it affords from
23 public disclosure and use extends only to the limited information or items that are entitled to

No. 2:22-cv-01370-RSL
STIPULATED PROTECTIVE ORDER-1

WATHEN | LEID | HALL | RIDER, P.C.
222 ETRURIA STREET
SEATTLE, WASHINGTON 98109
(206) 622-0494/FAX (206) 587-2476

1 confidential treatment under the applicable legal principles, and it does not presumptively
2 entitle parties to file confidential information under seal.

3 ///

4 **2. "CONFIDENTIAL" MATERIAL**

5 "Confidential" material shall include, but is not limited to, the following documents and
6 tangible things produced or otherwise exchanged:

7 (a) American Family's Claim Policy-Practices-Procedures Manual,
8 (b) American Family's Claims Manual.

9 **3. SCOPE**

10 The protections conferred by this agreement cover not only confidential material (as
11 defined above), but also (1) any information copied or extracted from confidential material; (2)
12 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
13 conversations, or presentations by parties or their counsel that might reveal confidential
14 material. However, the protections conferred by this agreement do not cover information that
15 is in the public domain or becomes part of the public domain through trial or otherwise.

16 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

17 **4.1 Basic Principles.** A receiving party may use confidential material that is
18 disclosed or produced by another party or by a non-party in connection with this
19 case only for prosecuting, defending, or attempting to settle this litigation.
20 Confidential material may be disclosed only to the categories of persons and
21 under the conditions described in this agreement. Confidential material must be
22 stored and maintained by a receiving party at a location and in a secure manner
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1 that ensures that access is limited to the persons authorized under this
 2 agreement.

3 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
 4 ordered by the court or permitted in writing by the designating party, a receiving
 5 party may disclose any confidential material only to:

- 6 (a) the receiving party’s counsel of record in this action, as well as
 7 employees of counsel to whom it is reasonably necessary to disclose the
 information for this litigation;
- 8 (b) the officers, directors, and employees (including in-house counsel) of the
 9 receiving party to whom disclosure is reasonably necessary for this
 litigation, unless the parties agree that a particular document or material
 produced is for Attorney’s Eyes Only and is so designated;
- 10 (c) experts and consultants to whom disclosure is reasonably necessary for
 11 this litigation and who have signed the “Acknowledgement and
 12 Agreement to Be Bound” (Exhibit A to the Model Stipulated Protective
 Order);
- 13 (d) the court, court personnel, and court reporters and their staff;
- 14 (e) copy of imaging services retained by counsel to assist in the duplication
 15 of confidential material, provided that counsel for the party retaining the
 16 copy or imaging service instructs the service not to disclose any
 confidential material to third parties and to immediately return all
 originals and copies of any confidential material;
- 17 (f) during their depositions, witnesses in the action to whom disclosure is
 18 reasonably necessary and who had signed the “Acknowledgment and
 19 Agreement to Be Bound” (Exhibit A to the Model Stipulated Protective
 Order), unless otherwise agreed by the designating party or ordered by
 20 the court. Pages of transcribed deposition testimony or exhibits to
 depositions that reveal confidential material must be separately bound by
 the court reporter and may not be disclosed to anyone except as
 21 permitted under this agreement;
- 22 (g) the author or recipient of a document containing the information or a
 23 custodian or other person who otherwise possessed or know the
 information.

1 **4.3 Filing Confidential Material.** Before filing confidential material or discussing
 2 or referencing such material in court filings, the filing party shall confer with the
 3 designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine
 4 whether the designating party will remove the confidential designation, whether
 5 the document can be redacted, or whether a motion to seal or stipulation and
 6 proposed order is warranted. During the meet and confer process, the
 7 designating party must identify the basis for sealing the specific confidential
 8 information at issue, and the filing party shall include this basis in its motion to
 9 seal, along with any objection to sealing the information at issue. Local Civil
 10 Rule 5(g) sets forth the procedures that must be followed and the standards that
 11 will be applied when a party seeks permission from the court to file material
 12 under seal. A party who seeks to maintain the confidentiality of its information
 13 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the
 14 party filing the motion to seal. Failure to satisfy this requirement will result in
 15 the motion to seal being denied, in accordance with the strong presumption of
 16 public access to the Court's files.

17 **5 DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each party or non-party that designates information or items for protection
 20 under this agreement must take care to limit any such designation to specific
 21 material that qualifies under the appropriate standards. The designating party
 22 must designate for protection only those parts of material, documents, items, or
 23 oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not
 2 warranted are not swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited.
 4 Designations that are shown to be clearly unjustified or that have been made for
 5 an improper purpose (e.g., to unnecessarily encumber or delay the case
 6 development process or to impose unnecessary expenses and burdens on other
 7 parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items
 9 that it designated for protection do not qualify for protection, the designating
 10 party must promptly notify all other parties that it is withdrawing the mistaken
 11 designation.

12 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
 13 agreement (see, e.g., second paragraph 5.2(b) below), or as otherwise stipulated
 14 or ordered, disclosure or discovery material that qualifies for protection under
 15 this agreement must be clearly designated before or when the material is
 16 disclosed or produced.

17 (a) **Information in documentary form:** (e.g., paper or electronic
 18 documents and deposition exhibits, but excluding transcripts of
 19 depositions or other pretrial or trial proceedings), the designating party
 20 must affix the word "CONFIDENTIAL" to each page that contains
 21 confidential material. If only a portion or portions of the material on a
 22 page qualifies for protection, the producing party also must clearly
 23 identify the protected portion(s) (e.g., by making appropriate markings in
 the margins).

(b) **Testimony given in deposition or in other pretrial or trial proceedings:** the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen

1 days after receiving the transcript of the deposition or other pretrial
 2 proceeding, designate portions of the transcript, or exhibits thereto, as
 3 confidential. If a party or non-party desires to protect confidential
 4 information at trial, the issue should be addressed during the pre-trial
 5 conference.

6 (c) **Other tangible items:** the producing party must affix in a prominent
 7 place on the exterior of the container or containers in which the
 8 information or item is stored the word “CONFIDENTIAL.” If only a
 9 portion or portions of the information or item warrant protection, the
 10 producing party, to the extent practicable, shall identify the protected
 11 portion(s).

12 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure
 13 to designate qualified information or items does not, standing alone, waive the
 14 designating party’s right to secure protection under this agreement for such
 15 material. Upon timely correction of a designation, the receiving party must make
 16 reasonable efforts to ensure that the material is treated in accordance with the
 17 provisions of this agreement.

18 **6 CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 **6.1 Timing of Challenges.** Any party or non-party may challenge a designation of
 20 confidentiality at any time. Unless a prompt challenge to a designating party’s
 21 confidentiality designation is necessary to avoid foreseeable, substantial
 22 unfairness, unnecessary economic burdens, or a significant disruption or delay
 23 of the litigation, a party does not waive its right to challenge a confidentiality
 designation by electing not to mount a challenge promptly after the original
 designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 regarding confidential designations without court involvement. Any motion

regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION**

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue
 2 in the other litigation that some or all of the material covered by the subpoena or
 3 order is subject to this agreement. Such notification shall include a copy of this
 4 agreement; and
 5 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 6 designating party whose confidential material may be affected.

7 **8 UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 9 confidential material to any person or in any circumstance not authorized under this agreement,
 10 the receiving party must immediately (a) notify in writing the designating party of the
 11 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 12 protected material, (c) inform the person or persons to whom unauthorized disclosures were
 13 made of all the terms of this agreement, and (d) request that such person or persons execute the
 14 "Acknowledgement and Agreement to Be Bound" ~~that is attached hereto as~~ (Exhibit A to the
 15 Model Stipulated Protective Order).

16 **9 INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 17 **PROTECTED MATERIAL**

18 When a producing party gives notice to receiving parties that certain inadvertently
 19 produced material is subject to a claim of privilege or other protection, the obligations of the
 20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 21 provision is not intended to modify whatever procedure may be established in an e-discovery
 22 order or agreement that provides for production without prior privilege review. The parties
 23 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

1 **10 NON-TERMINATION AND RETURN OF DOCUMENTS**

2 Within 60 days after the termination of this action, including all appeals, each receiving
3 party must return all confidential material to the producing party, including all copies, extracts,
4 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
5 destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
7 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
9 work product, even if such materials contain confidential material.

10 The confidentiality obligations imposed by this agreement shall remain in effect until a
11 designating party agrees otherwise in writing or a court orders otherwise.

12 STIPULATED and AGREED this 28th day March 2023.

13 **WATHEN | LEID | HALL | RIDER, P.C.**

14 *s/Dylan R. Knapp*
15 Rory W. Leid, III, WSBA #25075
Dylan R. Knapp, WSBA #58394
16 *Attorneys for Defendant*
222 Etruria Street
17 Seattle, WA 98109-1659
Tel: (206) 622-0494 | Fax: (206) 587-2476
18 rleid@cwlhlaw.com dknapp@cwlhlaw.com

19 **CLAUSEN LAW FIRM PLLC**

20 *s/ Steven Malek (via email approval)*
Steven M. Malek, WSBA #28942
21 9655 SE 36th Street, Suite 100
Mercer Island, WA 98040
22 Tel: (206) 223-0335 Fax: (206) 223-0337
smalek@clausenlawfirm.com

23
No. 2:22-cv-01370-RSL
STIPULATED PROTECTIVE ORDER-9

WATHEN | LEID | HALL | RIDER, P.C.
222 ETRURIA STREET
SEATTLE, WASHINGTON 98109
(206) 622-0494/FAX (206) 587-2476

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents, electronically stored information (ESI) or information, whether inadvertent or
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal
5 or state proceeding, constitute a waiver by the producing party of any privilege applicable to
6 those documents, including the attorney-client privilege, attorney work-product protection, or
7 any other privilege or protection recognized by law. This Order shall be interpreted to provide
8 the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid.
9 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's
10 right to conduct a review of documents, ESI or information (including metadata) for relevance,
11 responsiveness and/or segregation of privileged and/or protected information before
12 production. Information produced in discovery that is protected as privileged or work product
13 shall be immediately returned to the producing party.

14 Dated this 5th day of May, 2023.

15 

16 Robert S. Lasnik
17 United States District Judge

Submitted by:

18 **WATHEN | LEID | HALL | RIDER, P.C.**

19 *s/Dylan R. Knapp*

20 Rory W. Leid, III, WSBA #25075

21 Dylan R. Knapp, WSBA #58394

Attorneys for Defendant

22 222 Etruria Street

Seattle, WA 98109-1659

23 Tel: (206) 622-0494 | Fax: (206) 587-2476

rleid@cwlhlaw.com dknapp@cwlhlaw.com

Approved to form:

No. 2:22-cv-01370-RSL

STIPULATED PROTECTIVE ORDER-10

WATHEN | LEID | HALL | RIDER, P.C.

222 ETRURIA STREET

SEATTLE, WASHINGTON 98109

(206) 622-0494/FAX (206) 587-2476

1 **CLAUSEN LAW FIRM PLLC**

2 s/ Steven Malek (via email approval)

3 Steven M. Malek, WSBA #28942
4 9655 SE 36th Street, Suite 100
5 Mercer Island, WA 98040
6 Tel: (206) 223-0335 Fax: (206) 223-0337
7 smalek@clausenlawfirm.com

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No. 2:22-cv-01370-RSL
STIPULATED PROTECTIVE ORDER-11

WATHEN | LEID | HALL | RIDER, P.C.
222 ETRURIA STREET
SEATTLE, WASHINGTON 98109
(206) 622-0494/FAX (206) 587-2476